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Mailed: September 6, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Texwood Industries LLP

Serial No. 78323454

Edgar A. Zarin, Esq., for Texwood Industries LLP.

Michael Kazazian, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Quinn, Walters and Drost, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Texwood Industries LLP has filed an application to register on the Principal Register the standard character mark QUALITY REFACING SERVICES for "construction and remodeling services, namely, custom construction of kitchen and bath cabinetry," in International Class 40.¹ The application includes a disclaimer of SERVICES apart from the mark as a whole.

¹ Serial No. 78323454, filed November 5, 2003, based on an allegation of a bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive as intended to be used in connection with its services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The examining attorney contends that the term "quality" in the mark is merely laudatory, ascribing superior quality to applicant's construction services, and that these services include "cabinet refacing.". The examining attorney submitted a definition from *The American Heritage Dictionary of the English Language* (3rd ed. 1992) of "quality" as, in pertinent part, "noun, 3. a. Superiority of kind, b. Degree or grade of excellence; adj. Having a high degree of excellence." The examining attorney also submitted excerpts from seven different websites offering "cabinet refacing" as part of kitchen construction and remodeling services, a listing from the www.SuperPages.com directory showing that "cabinet refacing and refinishing" is a sub-category of listings under "construction/remodeling," and an excerpt of an article from www.housingzone.com entitled "Cabinet Refacing" that includes the following statements:

An attractive business opportunity may be staring you in the face - the cabinet face, that is. More and more homeowners are determined to give their kitchens a new look, but kitchen remodels can be pricey, not to mention inconvenient for homeowners while the work is being done. Enter **cabinet refacing**, a faster, more economical yet equally stylish alternative. Once a specialty hovering on the fringe of remodeling, **refacing** is now a major contender in the industry.

. . .

Kitchen Tune-Up ... has watched the **quality refacing** business rise markedly in the last decade.

In traversing the refusal, applicant contends the following (Response received November 8, 2004):

Nothing in the mark connotes that cabinets are being worked on. It is only by the stretch of the imagination that an individual consumer will immediately associate the mark with the services provided. Certainly in hindsight, upon hearing the mark and associating it with the services, the consumer will recognize the association.

In its brief (p. 1), applicant reiterated that "the examining attorney is using hindsight to associate the mark with the services."

Applicant also contends that rather than conveying a level of service, the QUALITY portion of its mark merely conveys that the mark QUALITY RESURFACING SERVICES is part of applicant's family of QUALITY marks, citing a registration number and an application number for the marks QUALITY DOORS and QUALITY CABINETS, respectively. We note that applicant has not submitted copies of either the

registration or application and, thus, these documents are not of record herein.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985).

A well-established principle that is particularly noteworthy in this case is that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977). Applicant, both in its brief and in the response quoted above, has essentially conceded that, when considered in connection with the

identified services, the consumer will immediately recognize QUALITY CABINET REFACING as referring to those services.

Moreover, the examining attorney has established the laudatory nature of the term QUALITY in the context of the mark, as it is clearly an adjective modifying the term CABINET REFACING and indicating that applicant's performance of these services is superior in quality. Further, the examining attorney has established that CABINET REFACING is a term of art used to describe a process that is often part of kitchen and bath construction and remodeling. Thus, CABINET REFACING is encompassed within the identified services.

When applied to applicant's services, the term QUALITY REFACING SERVICES immediately describes, without conjecture or speculation, a significant feature or function of applicant's services, namely that applicant provides superior quality services of refacing cabinets as part of its "construction and remodeling services, namely, custom construction of kitchen and bath cabinetry." Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the term QUALITY REFACING SERVICES as it pertains to applicant's identified services.

Serial No. 78323454

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.